

WAC 458-20-221 COLLECTION OF USE TAX BY RETAILERS AND SELLING AGENTS.

(1) STATUTORY REQUIREMENTS. RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state.

These are activities which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) DEFINITIONS.

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) LIABILITY OF BUYERS FOR USE TAX. Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) OBLIGATION OF SELLERS TO COLLECT USE TAX. Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) LOCAL USE TAX. Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform state-wide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform state-wide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) REPORTING FREQUENCY. Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file

returns and remit use tax more frequently than quarterly.

(7) SELLING AGENTS. RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) TIME AND MANNER OF COLLECTION. The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) EFFECTIVE DATE. This rule shall take effect on April 1, 1989.

[Statutory Authority: RCW 82.32.300. 89-06-016 (Order 89-4), '458- 20-221, filed 2/23/89, effective 4/1/89; 83-08-026 (Order ET 83-1), '458-20-221, filed 3/30/83; Order ET 70-3, '458- 20-221 (Rule 221), filed 5/29/70, effective 7/1/70.]